

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

(Hayward and San Lorenzo, CA)

LIFE CHIROPRACTIC COLLEGE WEST, INC.

Employer<sup>1</sup>

and

Case 32-RC-4690

WAREHOUSE UNION LOCAL 6,  
INTERNATIONAL LONGSHORE &  
WAREHOUSE UNION, AFL-CIO

Petitioner<sup>2</sup>

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>3</sup>, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>4</sup>

2. The parties stipulated, and I find, that the Employer, a California non-profit corporation, has facilities located in San Lorenzo and Hayward, California, where it operates a four year college of chiropractic and a chiropractic clinic. During the past 12 months the Employer has received gross revenues in excess of \$1,000,000 and has purchased goods and

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> Petitioner's name appears as amended at the hearing.

<sup>3</sup> Briefs filed by the parties have been duly considered.

<sup>4</sup> Upon a review of the record and specifically the facts contained in the Employer's offer of proof regarding the clinic faculty doctors, the Hearing Officer's ruling regarding the Employer's offer of proof is sustained. Thus, assuming arguendo that these facts are true, their inclusion in the record would not change my ultimate finding of a lack of a community of interest between the clinic faculty doctors and the employees in the petitioned-for unit.

services valued in excess of \$50,000 from firms which are located outside the State of California. In such circumstances, I find the assertion of jurisdiction herein appropriate.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of the Act.

4. Petitioner claims to represent certain employees of the Employer.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. Petitioner seeks to represent the Employer's radiologic technologists (herein called RTs) employed at its clinic facility located at Hayward, California.<sup>5</sup> Petitioner would exclude all other employees, as well as guards and supervisors as defined by the Act. Contrary to Petitioner, the Employer contends that, in addition to the RTs, the unit should include four clinic faculty doctors, a lab teacher/scientific instruction technician, five computer technicians, one computer education specialist, and an audio-visual technician.<sup>6</sup> For the reasons set forth below, I find that the petitioned-for unit of RTs is appropriate.

The Employer operates a 4-year chiropractic college and a chiropractic clinic. The main campus of the college, which includes classroom and laboratory facilities, a library, and administrative offices, is located in San Lorenzo, California. The Employer also operates two facilities in Hayward, one of which is an additional classroom campus and the other of which is a chiropractic clinic (herein called the Clinic).<sup>7</sup> The Employer employs a total of 202 employees, including approximately 50 to 55 full-time faculty members and between 55 and 60 part-time faculty members.

The Employer's operations are governed by a Board of Regents which appoints the college President, the highest level executive. The President in turn appoints seven college deans or department heads who report directly to him: the Academic Dean, the Dean of Clinics, the Chief Financial Officer, the Director of Institutional Management, Dean of Students, and the head of the Government-Relations Department. The Chief Financial Officer, Reza Badiee, has seven department managers at the San Lorenzo campus who report to him: Buildings and Grounds Manager; Bookstore Supervisor; Clinic Financial Officer; Controller; Director of Information Technology; Financial Aid Director; and, Human Resources Director.

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<sup>5</sup> The radiologic technologists were also referred to in the record as "RTs", radiographic technologists and imaging technicians.

<sup>6</sup> Initially, the Employer also sought to include four teachers/instructors involved in the radiology instruction of students. However, the Employer provided no evidence during the hearing, and made no argument in its brief, regarding the four teachers/instructors. Thus, it appears that the Employer no longer seeks their inclusion in the Unit. The four teachers/instructors are therefore excluded from the Unit.

<sup>7</sup> In mid-year 2000, the Employer anticipates that the three facilities will be consolidated into one facility.

The Clinic treats members of the public who come to the Clinic in need of chiropractic care; the Clinic is open from 9 a.m. to 8 p.m. Monday through Friday and from 9 a.m. to 1 p.m. on Saturdays. By working at the Clinic, fourth-year chiropractic students (or interns) gain practical on-the-job training through treatment of patients under the supervision of a clinic faculty doctor. The top executive of the Clinic is Gerard Klum. Directly below Klum in the Clinic hierarchy is the Dean of Clinics, Colleen Hughes who travels between San Lorenzo and the Clinic. Just below Hughes are various department heads including the Clinic Faculty Development Director, Scott Donaldson, who supervises both the full-time and part-time faculty and the radiology department. The radiology department consists of three RTs and the “D.A.C.B.R.” Bryan Gatterman. Gatterman is an M.D. housed at the clinic and is responsible for reading X-rays, writing reports and teaching courses at the “campus.”<sup>8</sup>

The RTs work solely at the Clinic. John Bernard and Romier Visperas work full-time from 8 or 8:30 a.m. to 5:30 p.m. Monday through Friday, while Tamara Thomas works part-time from 5:30 to 8 p.m. Monday through Thursday and from 9 a.m. to 1 p.m. on Saturday. RTs report to Scott Donaldson. Their primary function is to take and process X-rays. Initially, a patient entering the Clinic is referred by the receptionist to an intern who interviews and physically examines the patient. Thereafter, a faculty doctor evaluates the patient and orders X-rays if necessary. If an X-ray is needed, the patient is referred to one of two X-ray rooms in the Clinic where radiography equipment is located. The RTs show interns how to properly position the patient. Once the patient is properly positioned, the RT takes the X-ray; interns do not take the X-ray as they are not permitted to handle the X-ray equipment. After taking the X-ray, the intern may accompany the RT to the darkroom where the RT will show the intern how the X-ray is developed. Once the X-ray is developed, the RT or the intern will take the X-ray to the records room. From there, Bryan Gatterman will read the X-ray and write an analysis of the X-ray to be used by the intern and the supervising doctor in treating the patient.

In addition to their overall tasks of taking and processing X-rays and teaching proper positioning techniques to the interns, RTs are responsible for performing specific tasks on a daily, monthly, and quarterly basis. For example, on a daily basis, RTs perform the following tasks: collect films to be copied from the records room; prepare the X-ray room for daily operations; turn on and check radiographic equipment; refill/replenish radiographic equipment tanks; check and replenish film bins; copy films requested by records room; run daily Quality Control and Quality Assurance communication board<sup>9</sup>; take and copy films for any outside field doctors ordering films; take X-rays for any emergency or acute care patients; assess mock setups for students; maintain daily logs for preparation of monthly and quarterly reports; and, prepare department for closure (shutoff processor, clean dark room, and shutoff equipment). On a monthly basis, RTs perform the following tasks: maintain photodosimetry program; prepare and maintain daily schedule for records room; schedule repairs of equipment and processor; maintain monthly film usage count and patient count; and, maintain hazardous waste manifests.

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<sup>8</sup> The record does not specify whether Gatterman teaches at the Hayward or San Lorenzo campus.

<sup>9</sup> Quality Control and Assurance are processes by which the RTs make sure that the radiographic equipment is working properly.

Quarterly, RTs are responsible for ordering supplies for the department and preparing department reports which are submitted to Scott Donaldson and Bryan Gatterman.

The two full-time RTs, Romier Visperas and John Bernard, also provide positioning instruction to interns from 8:30 to 11:30 a.m., on Monday and Wednesday. After attending a 1-hour classroom session on positioning patients for X-rays taught by faculty doctor Susan West,<sup>10</sup> interns are broken up into smaller groups and taken to the X-ray rooms for hands-on positioning instruction by the RTs. The RTs provide guidance while the interns practice positioning techniques using other interns. Interns stay for an hour and then another round of students comes to the X-ray room. RTs are paid on a salary basis bimonthly. Bernard and Visperas earn between \$40,000 and \$55,000 annually and receive extra pay of \$20 per hour for teaching the positioning class; the record does not establish how much the part-time RT, Tamara Thomas, earns. RTs receive compensatory time of 1.5 hours per every hour they work outside 8 hours.

The RTs are required to possess the following credentials and experience: a Certificate of Radiologic Technology (CRT) license; three years experience as an RT; and, prior experience with Quality Control (QC) and Quality Assurance (QA); or, be a Doctor of Chiropractic (D.C.) with an operator's license and be currently enrolled in a radiology residency program with the college. All three RTs have CRTs and are certified by the state of California. The required course of study for the CRT includes 500 hours of formal classroom instruction in courses such as anatomy, physiology and physics, and 1850 hours of supervised clinical instruction, including the performance of not less than 1,000 hours of radiographic procedures.

There are four Clinic Faculty Doctors whom the Employer seeks to include in the Unit with the RTs: David Donaldson, Melissa McMullen, Lou Tiscareno and Douglas Bell. These Doctors have a Doctor of Chiropractic (D.C.) from an accredited college, a California State license to practice chiropractic, and a minimum of three years practical experience as a chiropractor. The Faculty Doctors are responsible for training and instructing students, and monitoring all aspects of patient care. Further, Faculty Doctors perform the following tasks: assist and observe interns with patient care (floor doctor); assign patients and conduct initial and follow-up history and evaluations (doctor of the day); discuss patients files with interns and authorize patient care (CMR doctor); manage clinical operations (floor supervisor); mentor a group of interns during their internship (faculty advisor); participate on at least two clinic committees (committee member); attend required meetings, assist in clinic proficiency exam; and, perform peer reviews. Historically, doctors have only taken X-rays if there is a special need and it has not been part of their regular duties. However, the Employer anticipated at the time of the hearing that, on about November 1, doctors might start taking X-rays on a rotational basis to cover for RTs; the Employer is not sure how much time doctors would be performing RT work but asserts that doctors will provide relief for RTs who are on vacation. Traditionally, during their vacations, the full-time RTs have placed a sign on their X-ray room that they are on vacation and the amount of radiography has been cut back until the RT returns from vacation.

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<sup>10</sup> The Employer has not sought to include West in the Unit.

There are five employees in the Information Technology Department referred to collectively as “computer technicians,” (herein called technicians) whom the Employer also seeks to include in the Unit: Darla Saunders, Ali Manafi, Shant Deo, Shane Hull and Sandy Skolnik. Generally, the technicians are responsible for providing clinical support and maintaining the Employer’s computer systems at all three of the Employer’s facilities. The technicians report to Jeffrey Maxwell, the Director of Information Technology, who in turn reports to the Chief Financial Officer, Reza Badiiee. While the technicians are housed at the main campus in San Lorenzo, at times they travel between the different locations to perform trouble-shooting support, check servers, make sure that computer hardware and software is operating correctly, and install and setup computers. Among the five technicians there is one Administrative Assistant III, Darla Saunders, who is a high school student. Saunders is the only one of the computer technicians who receives overtime pay. The remaining four technicians are salaried employees and receive compensatory time if they work outside their regularly scheduled hours. Of those four “technicians,” one is classified as a System Support Specialist 1 (Shant Deo), two as System Administrator 1 (Ali Manafi and Shane Hull), and one as a System Administrator 2 (Sanford Skolnik). The System Support Specialist 1 provides help desk support for all users including phone support, initiating work orders, monitoring the progress of work orders, closing work orders, contacting vendors, maintaining documentation related to software and hardware purchases, and keeping logs of all hardware and software checked out to employees. This position requires a high school diploma or above. The Systems Administrator 1 provides complete system support for the Employer’s network; builds, setups and installs software for all users; responds to and resolves low to mid-level help desk issues; makes PC and peripheral repairs; acts as a mentor for lower level data services staff; and, monitors and maintains hardware inventory for all sites. This position requires an AA degree in Computer Science or equivalent computer-related experience.<sup>11</sup> The technicians are normally scheduled to work 40 hours per week, but may be required to work additional hours if the computers malfunction. On occasion, technicians will work several consecutive days, including Saturday and Sunday, in order to restore the computer system.

In addition to the above five technicians, the Employer seeks to include the Computer Education Specialist, Ray Smyer, who works in the library at the San Lorenzo campus. Smyer holds a Master’s degree and manages the computer lab which includes the following duties: supervise 6 computer lab assistants (hires, trains, issues performance appraisals, and makes pay decisions); provide support, assistance and formal instruction for staff, faculty and students with emphasis on PC-based applications and instructional CD-ROM products; develop class content and maintenance routines; prepare lab policies and quarterly and annual statistical reports; assist with development of the budget and proposals such as plans for library automation or network access; promote and evaluate services to staff, faculty and students; plan and conduct workshops; provide initial trouble-shooting of library hardware and software for any malfunctioning computer in the learning resource center; and, maintain the Employer’s “Adam” software – software designed specifically for education of chiropractic students. Smyer reports to Library Director Annette Osenga. His work schedule may vary with the needs of the students and he

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<sup>11</sup> No job description was provided for the Systems Administrator II; apparently, this position differs from the Systems Administrator I position in that it requires a higher level of competency.

sometimes works on Saturday if students using the library need assistance with the computer lab or the “Adam” software. Although there are no set educational requirements for the Computer Education Specialists, the specialists should at least have a Novell certification either as a certified network engineer and/or administrator (CNE or CNA). Smyer and the other five computer technicians earn anywhere from \$40,000 to \$55,000 per year.

The Laboratory Teacher/Scientific Instruction Technologist (Sergio Tony Fernando) works in the anatomy laboratory located at the San Lorenzo main campus. The laboratory is open from 8 a.m. to 7 p.m., Monday through Friday. Fernando’s main job function is to teach students anatomy and physiology through class presentation and through the dissection of cadavers in the laboratory. Fernando is also responsible for testing and grading the students. Fernando holds B.S. and D.C. degrees and earns a salary of between \$40,000 to \$55,000 per year. Fernando reports to Steve James, the Lab Manager, and John Boss, the Chair of the Anatomy and Chemistry Department. Steve James is one of six chairpersons who report to the Dean of Instruction.

Finally, the Employer seeks to include an Audio-Visual Technician, Branden Owen, who works out of the library at the San Lorenzo campus. Owen is responsible for setting up audio-visual equipment as needed in the classrooms or other locations. Owen travels to the other facilities in Hayward when there is a class or other event that needs video or audio services. The Audio-Visual Technician must have experience in the operation of audio and visual equipment but no educational requirement other than a high school diploma is required. Owen works Monday through Friday, is paid on a salary basis and reports to Audio-Visual Supervisor Wanda Butterly.

Although RTs previously punched a time card, the Employer discontinued this requirement in July or August of 1998 based on the RTs’ certifications, their salary level and their classification as professional-exempt employees. There is no interchange in work between the RTs and the computer technicians, computer education specialists, audiovisual technician, or the Lab Teacher. Thus, none of the employees in these classifications fill in for the RTs nor do the RTs fill in for any of them. Also, unlike the RTs, none of these employees take X-rays or have contact with patients. Additionally, the RTs have little or no work-related contact with the employees in those classifications. RTs do not use the Employer’s computer system; rather, the computer work performed by the RTs is limited to the use of the internal computer in the X-ray equipment.

All full-time employees receive the same benefits including health, dental, vision, life insurance, sick leave, vacation and pension benefits. Part-time employees working less than 20 hours are not entitled to benefits. Thus, Tamara Thomas, the part-time RT, does not receive benefits. The full-time RTs receive four weeks of vacation per year.

In deciding the appropriateness of a bargaining unit, the Board first considers the union’s petition and whether the requested unit is appropriate. Overnite Transportation Company, 322 NLRB 723 (1996). The Board, however, does not compel a petitioner to seek any particular appropriate unit. Id. The petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, not the most appropriate unit, and in representation proceedings, the unit

sought by the petitioner is always a relevant consideration. Lundy Packing Co., 314 NLRB 1042, 1043 (1994). A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer. Overnight, *supra* at 723. In arriving at an appropriate unit determination, the Board weighs various community of interest factors, including:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs. . .; the infrequency or lack of contact with other employees; lack of integration with other employees; lack of integration with work functions of other employees or interchange with them; and the history of bargaining.

*Id.* at 724, citing Kalamazoo Paper Box Corporation, 136 NLRB 134 137 (1962). No one of the above factors has controlling weight and there are no *per se* rules to include or exclude any classification of employees in any unit. Airco, Inc., 273 NLRB 348 (1984).

Initially, the Employer argues that the petitioned-for unit consisting only of RTs is inappropriate because it does not include all other “technical” employees and cites St. Luke’s Hospital, 234 NLRB 130 (1978). However, St. Luke’s is wholly inapposite as it involves the appropriateness of a Regional Director’s inclusion of an employer’s unrepresented technicians at a single facility into an established multiemployer unit. Furthermore, St. Lukes is inapplicable since it involves an acute-care facility which would now be covered by the Board’s rule covering appropriate bargaining units in such facilities. Board’s Rules and Regulations Section 103.30, 284 NLRB 1515. Notwithstanding the lack of analogy, the Board in St. Luke’s in overruling the Regional Director discussed the dissimilarities in the working conditions of the unrepresented technical employees, specifically noting that they worked in different locations and were separately supervised. Therefore, St. Luke’s does not support the Employer’s position that all the employees characterized as “technicians” by the Employer should be included in the petitioned-for unit since, as discussed more fully *infra*, the other “technicians” do not share a community of interest with the RTs.

The RTs in the instant case constitute a distinct and homogeneous group. First, with the exception of the Clinic Faculty Doctors, all other employees which the Employer seeks to include work at the San Lorenzo campus. Thus, there is absolutely no interchange between the RTs and the “technicians,” Lab Teacher, Computer Education Specialist and Audio-Visual Technician. Of these employees, only the RTs take X-rays and have contact with patients. In addition, the work of the RTs is totally different from the work performed by these other classifications. The RTs take and process X-rays for the Clinic’s patients, while the technicians maintain computer systems and provide trouble-shooting support for computer systems which the RTs do not even use. Similarly, as is evident from the job descriptions above, the work of the Lab Teacher, Computer Education Specialists and Audio-Visual Technician is not at all similar to the RTs work. Also, the RTs are separately supervised by Donaldson who in turn is under a completely different chain of command than the employees at the San Lorenzo main campus that the Employer seeks to include.

Further, the education and training requirements of the RTs are much different from the employees the Employer seeks to include. As stated above, RTs are required to have a CRT license from the State of California which includes approximately 2,350 hours of instruction and practical training. The only educational prerequisite for the five “computer technicians” is a high school diploma and even that may not be required – Darla Saunders, one of the five “computer technicians” who holds the position of Administrative Assistant III, is a high school student. While the System Administrator I position states that an AA degree in Computer Science is required, the degree may be substituted with equivalent computer-related experience. Similarly, there are no educational requirements for the Computer Education Specialists or the Audio-Visual Technician.

The Employer also argues that four of the clinic faculty doctors should be included in the unit with the RTs because the doctors and RTs both teach students, interact with students and patients, and because the Employer planned to have doctors start taking X-rays on a rotating basis to cover for RTs on November 1. However, the limited overlap in the RT’s and Clinic doctors’ duties is certainly not sufficient to *require* the doctors inclusion in the Unit, especially considering the significant differences in the education, training, job functions and patient care responsibilities of the two groups. While the two full-time RTs instruct interns on the proper positioning of patients six hours per week, their primary duties (thirty-four hours per week) are to take and process X-rays. The doctors, on the other hand, are primarily responsible for the day-to-day operation of the entire Clinic, including the supervision of interns and diagnosis of patients. Scott Donaldson, the Clinic Faculty Development Director, has even less of a community of interest with the RTs as he directly supervises, reviews and evaluates their work. In addition, the doctors each have a four-year D.C. degree which the RTs do not possess. Moreover, doctors participate in committees and peer reviews in which the RTs play no role. Furthermore, and beyond their lack of a community of interest, the clinic faculty doctors hold advanced degrees, are licensed by the State of California as Doctors of Chiropractic, exercise independent judgment and, therefore, I find that they are professional employees within the meaning of Section 2(12) of the Act. Also, petitioner does not seek to represent the clinic faculty doctors.

While the general focus of the Employer’s organization and each of its employees may be to instruct students so that they may enter the chiropractic profession with sufficient knowledge and skill, this common organizational goal is not sufficient to establish a community of interest among the employees the Employer seeks to include and the RTs. Also, the fact that the RTs receive the same fringe benefits (including a salary in the same \$40,000 to \$55,000 range as others) is not dispositive since other employees whom the Employer does not seek to include also receive the same fringe benefits. In considering all of the above factors, I find that the four clinic faculty doctors, the lab teacher/scientific instruction technician, the four teachers/instructors, the five computer technicians, the computer education specialist, and the audio-visual technician do not share a community of interest sufficient to require their inclusion in the unit of RTs.



In summary, and based on the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time radiologic technologists employed at the Employer's Hayward Clinic; excluding all other employees including Clinic faculty doctors, computer technicians, computer educational specialists, lab teachers/scientific instructional technologists, audio-visual technicians, guards and supervisors as defined in the Act.

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election<sup>12</sup> to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHORE & WAREHOUSE UNION, AFL-CIO.

#### LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, 1301 Clay Street, Suite 300 N, Oakland, California 94612-5211, on or before November 26, 1999. No extension of time to file this list shall be granted except in extraordinary

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<sup>12</sup> Please read the attached notice requiring that the election notices be posted at least three (3) days prior to the election.

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 2, 1999.

DATED AT Oakland, California, this 18<sup>th</sup> day of November, 1999.

/s/ James S. Scott  
James S. Scott, Regional Director  
National Labor Relations Board  
Region 32  
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